EX PARTE OR LATE FILED

Association for Local Telecommunications Services

May 7, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written Ex Parte in CC Docket No. 98-121

Dear Ms. Salas

Attached is a copy of a written ex parte letter to Mr. Michael Pryor of the Common Carrier Bureau.

Pursuant to Section 1.1206(b)(1) of the Commission's rules I am filing two copies of the ex parte to be placed in the record of that proceeding.

Could you please date stamp the additional copy and return it to me in the self-addressed stamped envelope.

Thank you for your time and consideration.

Sincerely
Emily M. Williams
Emily M. Williams

cc: Michael Pryor
Larry Strickling
Claudia Pabo
Kathleen Levitz

No. of Copies rec'd 0+1
List ABCDE

888 17th Street, NW • Suite 900 • Washington, DC 20006 • 202.969.ALTS • Fax: 202.969.ALT1

ALTS
Association for Local Telecommunications Services

May 7, 1999

Mr. Michael Pryor
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dear Michael,

The Association for Local Telecommunications Services ("ALTS") has reviewed the BellSouth "Proposal for Self Effectuating Enforcement Measures" that was recently filed as an ex parte in Docket 98-121. While the members of ALTS are pleased that BellSouth has begun to work on performance reports and enforcement measures (and, specifically, self-effectuating monetary damages), the current proposal falls far short of what is needed to ensure nondiscriminatory treatment of CLECs and compliance with the provisions of the Telecommunications Act of 1996. The BellSouth proposal should not be accepted by the Commission, even as a temporary measure or a starting point, without significant changes.

As the Commission is aware, competitive local exchange carriers ("CLECs") have been seeking performance reports and enforcement measures for almost three years. In its initial comments in CC Docket 96-98, ALTS emphasized the need for normal commercial enforcement provisions in interconnection agreements and in a petition for reconsideration of the First Report and Order in that docket ALTS asked that the Commission find that an ILEC refusal to include ordinary commercial enforcement mechanisms in interconnection agreements constitutes a violation of the duty to negotiate in good faith. That petition is still pending.

In 1997, the issue of performance reports and enforcement measures was again raised before the Commission in a petition filed by LCI International Telecom Corp. and the Competitive Telecommunications Association (CompTel).[1] While that petition emphasized the need for performance measures and standards, the petition also raised questions about enforcement provisions relating to the performance standards.

Then, in 1998, the Commission issued a Notice of Proposed Rulemaking on performance measures and reporting requirements for Operations Support Systems, interconnection, and Operator Services and Directory Assistance.[2] ALTS and other CLECs filed comments generally

[1] RM 9101 (Petition filed May 30, 1997).

[2] See NPRM in CC Dkt. 98-56 (released April 17, 1999).

supporting and urging quick adoption of the Commission's proposal almost a year ago.[3] Finally, in early 1999, Allegiance Telecom, Inc. filed a petition for expedited rulemaking asking the Commission to develop a national framework to detect and deter backsliding by Bell Operating Companies after Section 271 authority is granted.[4] The Allegiance petition asks that the Commission establish verifiable standards for Section 251 requirements and ensure that meaningful remedies are available to the CLECs if those standards are not met. The Allegiance petition suggests a three tiered approach to penalties based upon the amount of time that a violation occurs. Comments and replies in response to the Allegiance petition were filed just a little over a month ago.

While BellSouth deserves credit for recognizing that monetary damages should be paid to CLECs for failure to meet the standards required, the remainder of the BellSouth proposal is significantly less likely to detect or deter ILEC discrimination against CLECs or failure to comply with the requirements of Section 251 than many of the proposals in either the LCI-Comptel petition, the Commission's OSS proceeding, or the Allegiance petition[5]. It is important that the Commission have a proactive, long-term vision to protect against backsliding and ILEC intransigence. Rather than adopt in any way the BellSouth proposal the Commission should expeditiously rule on the ALTS petition for reconsideration in CC Dkt 96-98, and complete CC Dkt 98-56, RM 9101 and RM 9474. In completing these proceedings the Commission must ensure that the rules adopted are broad enough to cover all services (including broadband services) and all technologies now being employed or to be employed in the future by CLECs.

The BellSouth Proposal

BellSouth states that the proposal it has submitted to the Commission is a voluntary proposal made in light of the FCC's statements in the second Louisiana Section 271 denial that a system of self-effectuating enforcement measures should be established to ensure that BellSouth does not backslide in providing services to the CLECs after Section 271 authority to granted. The enforcement measures would, under the plan, take effect after grant of Section 271 authority in

---

[3] ALTS supported Commission action even when ALTS did not fully agree with the Commission proposal because ALTS concluded that it would be better to have some rules in place - even if not perfect - rather than nothing. See Comments in CC Docket 98-56. However, it would be a large mistake to adopt the BellSouth proposal, which includes far too few performance measures and wholly insufficient penalties.

[4] RM 9474 (petition filed February 1, 1999).

[5] The BellSouth proposal is also significantly less likely to ensure satisfactory ILEC performance than the measures being considered and adopted in the states, in particular New York and Texas.

any state and the enforcement measures would "be put in place by adding them to existing contracts between BellSouth and the CLECs, immediately after a 271 petition is approved by the FCC." Proposal at 7.

BellSouth would collect data on nine "key" measures each month based on measures in BellSouth's existing Service Quality Measurements. In analyzing the measurements, BellSouth provides a retail analog for each measurement,[6] establishes an acceptable level of variance from BellSouth's performance, and establishes a standard for making enforcement payments to the CLECs if the material variance is exceeded. BellSouth asserts that because a CLEC is compensated for every instance of service failure (not just failures beyond parity) the CLEC is returned to the financial position of "perfect service."

The Bell Companies Should Adopt Performance Reporting and Enforcement Measures Prior to Grant of any Section 271 Authority

As noted above, the BellSouth proposal would take effect after grant of Section 271 authority in any state. But the Commission made it clear in the second Louisiana Section 271 proceeding that it considers performance reporting and enforcement measures to be critical to the public interest determination that it is required to make.[7] In addition, the 14 point checklist requires that the various checklist items be provided in a nondiscriminatory manner so that even outside the public interest determination, the Commission is required to make determinations relative to parity and nondiscrimination. The BellSouth proposal is yet another example of the Bell Operating Companies coming to a regulatory agency and bargaining for regulatory relief,

---

[6] BellSouth states that the only key measurement for which there is no retail analog is due dates met for collocation. Therefore, BellSouth proposes that a benchmark of "no due dates missed" be established. Although BellSouth argues that there are retail analogs for all other key measurements, ALTS does not necessarily agree with BellSouth. Comparing installation timeliness for resold services, for example, to the timeliness of installation of new retail service does not make much sense as the initiation of service via resale should take far less work on the part of the ILEC than the institution of new service. Resale involves primarily a billing change and ought to be able to be completed in a very short period of time, while the commencement of new service can take substantially longer.

[7] See In re Application of BellSouth Corporation *et.al.* for Provision of In-Region, InterLATA Services in Louisiana, CC Dkt 98-121 (Oct. 13, 1998). While the Commission stated that the presence or absence of any one factor (e.g. performance measures and self-effectuating enforcement measures) would not dictate the outcome of the public interest inquiry, the Commission strongly supported those factors and noted that the "absence of such enforcement mechanisms could significantly delay the development of local exchange competition." Id. at para. 264.

based on a promise that it will take various actions in the future. But history demonstrates that the BOCs have not been particularly forthcoming in their compliance with conditions subsequent. [8] In addition, while Section 271 of the 1996 Act does not specifically require self-effectuating enforcement measures, the basic premise of Section 271 is that the RBOCs should take all required actions and any other actions found to be in the public interest *prior* to obtaining Section 271 authority.

In addition, as noted above, BellSouth states that the enforcement measures would be "put in place by adding them to existing contracts between BellSouth and CLECs, immediately after a 271 petition is approved by the FCC." Thus, it seems that BellSouth is proposing to the Commission that it be allowed to unilaterally change the negotiated agreements. While it is not exactly clear what BellSouth is seeking from the Commission in the way of "approval" of its plan, BellSouth should certainly not be allowed to unilaterally change negotiated agreements. There may be CLECs who have better enforcement provisions in their existing contracts and, in any event, there will be CLECs who do not agree that the penalties are sufficient. CLECs should have been able to negotiate normal commercial enforcement provisions since the enactment of the 1996 Act[9]. BellSouth's forcing their version of penalties at this time is unacceptable

The BellSouth Proposal on the Measurement of Nine Key Items Is Not Sufficient

BellSouth references the LCI/Comptel proposal that is discussed above. It argues essentially that the LCI/Comptel proposal is overly complex and burdensome, both in the number and complexity of the measures proposed and in the depth of disaggregation of geography and services suggested. BellSouth states that the measures it proposes include all the key measures in the LCI/Comptel proposal and that the extra requirements proposed by LCI/Comptel go far beyond meaningful measures for end users. While it may be that some of the measures that LCI/Comptel have proposed can be either combined with other measures or aggregated to an extent and while there is some appeal to having a limited amount of material for all parties involved, it is absolutely clear that the BellSouth proposal is not sufficient to deter or detect discriminatory or insufficient treatment of CLEC requests and needs.

---

[8] When Bell Atlantic and Nynex merged they agreed to a number of conditions subsequent. A number of those conditions have never been fully satisfied.

[9] ALTS has supported Commission rules relating to performance measures and enforcement mechanisms. As with other rules that the Commission has enacted pursuant to Sections 251 and 252, however, any Commission rules could set the parameter or default measurements and enforcement provisions, but individual companies could negotiate a different result.

The proposed measurements and reports do not contain sufficient information to ensure that CLECs and the ILEC are being treated at parity. For example, there is only one measurement that is proposed to be made relating to billing functions. That is a timeliness measurement. There is no measure proposed relating to accuracy of billing information. Clearly, billing information accuracy is just as important to the CLEC as is timeliness.

Likewise, the measurement for installation and repair timeliness is based only on the percent of missed repair appointments. There is no definition of "missed repair appointment" (i.e., how late must the repairman be to constitute a "missed repair appointment").[10] In addition, the percent of missed repair appointments may only tell a small part of the story. As the Commission recognized in its NPRM in CC Docket 98-56, the average time of repair could be quite different and there could still be no difference in the percentage of due dates missed. For example, if BellSouth commits to completing repairs within 48 hours of notification and the average repair for a BellSouth customer is two hours but the average repair time for a CLEC customer is 47 hours, BellSouth would not be liable for any penalties. Nonetheless, there would not be parity in the provision of repair service. Consequently, BellSouth and any other ILEC should be collecting and reporting information on average completion intervals. In addition, there should be reporting of the number of visits necessary to resolve quality problems.[11]

The measurement for the provision of OSS features and functions appears to be related only to the "availability" of the OSS pre-ordering and ordering functions and features. "Availability" is not defined so ALTS is not quite sure what measure BellSouth is proposing. Assuming that "availability" is given its everyday meaning, however, that measure would not necessarily track accuracy and speed. In the NPRM in CC Docket 98-56 the Commission recognized that measurements must include the average response time, the average completion interval, the average coordinated customer conversion interval, the average interval for various notices between the carriers, and the percentage of orders given jeopardy notices, among other things. It is also not clear precisely what information or functions would be included in the pre-

---

[10] Also, in describing the measurement methodology for installation timeliness, for example, BellSouth states that the percent of missed installation appointments will be computed by dividing the number of orders missed in the reporting period by the number of orders completed in the reporting period. This could lead to quite misleading results as the denominator presumably will include a number of missed appointments that in the long run were completed in the reporting period.

[11] We also note that the only measure proposed relating to UNE installation quality is the percent of trouble reports within four days of installation. ALTS suggests that a much more accurate reflection of installation quality would be the percent of trouble reports within two to four weeks of installation.

ordering and ordering measurements and BellSouth needs to be more explicit in this area.[12] In addition, OSS functions include more than pre-ordering and ordering functions and any measurements and enforcement provisions should reflect all aspect of OSS.

With respect to collocation, the only measure proposed is timeliness. And, it appears that BellSouth proposes to measure only the timeliness of the actual provision of collocation space (i.e., after any construction that BellSouth may require) according to a due date. As the Commission is well aware one of the continuing problems that CLECs encounter is ILECs that simply don't respond to CLEC requests for collocation space. If the ILEC never sets a due date or sets a date after a substantial delay, this problem would never be measured.

Moreover, a significant aspect of collocation is quality and completeness of the collocations space provided. Too often when an ILEC delivers collocation facilities those facilities are lacking many significant factors or functions, necessary for the provision of service. For example, ILECs have delivered collocations spaces without CFA (Customer Facilities Assignment) information, without needed DSX panels, power supply and fuses, and without access cards. Thus, while facially the ILEC may be delivering collocation within the interval, in practical effect the delivery interval is much longer. Thus, intervals should be measured not based on the date of delivery of the collocation arrangement, but rather the date that the arrangement is actually complete.

Finally, there are no measures for a number of functions vital to facilities-based CLECs. For example, there are no measures relating to LNP or NXX turn up.

The Proposal to Measure the Results for all CLECs Aggregated at the State Level will not Sufficiently Detect Problems

BellSouth proposes to measure the results for all CLECs aggregated at a state level. There is clearly a balance that must be struck between measuring and gathering so much detail and such disaggregated information that regulators and CLECs "cannot see the forest for the trees" and gathering insufficient information to detect discriminatory practices. Information gathered on the state level is too likely to mask problems that may occur. ALTS suggests that a more appropriate disaggregation would be at the MSA level. First, of course, it is more likely that individual CLECs, at least initially, will enter markets on an MSA by MSA basis rather than

---

[12] BellSouth should list the information that would be included in the measurement. It is essential, for example that CLECs providing advanced services have access to loop identification information at the same time and in the same manner that the ILEC makes available to itself. Specifically, CLECs should be able to access information on loop length, loop gauge, the presence and cumulative length of bridge taps, DLC vaults and the presence of load coils, repeaters and Digital Added Main Lines ("DAMLs")

the entire state. Second, although BellSouth may complain that information on an MSA by MSA level would be cumbersome to collect and report, that objection is not well taken. Obviously the information will have to be collected initially on a disaggregated basis so that reporting it on a disaggregated basis should be relatively easy.[13]

The Proposed Self-Effectuating Enforcement Measures are Insufficient.

As indicated, ALTS is encouraged that BellSouth recognizes that monetary penalties are appropriate when it does not provide CLECs with the services or facilities that the CLEC has ordered. Ideally, monetary damages should be set at a level that encourages BellSouth (and other ILECs) to fully comply with the requirements of the 1996 Act and its signed interconnection agreements. The members of ALTS understand that the Commission does not want to set penalties so high that the CLEC community would prefer the remedy over quality service. But the Commission should rest assured that the CLECs that ALTS represents are in this business to provide quality services at lower prices and also have no interest in penalties beyond those that would encourage the ILECs to supply those services and facilities for which the CLECs have contracted. At the same time, it must be recognized that ILECs do not have incentives to provide CLECs with quality, timely service. Penalties must be high enough to give the ILECs business reasons to provide the required services.

Although ALTS has not had sufficient time to fully consider the penalties that are suggested and it is not entirely clear what BellSouth is proposing, a preliminary review of the proposal raises significant issues. In its initial description of the payments that BellSouth proposes, it states that "[w]hen a 'parity' failure is detected the CLEC is compensated for EVERY instance of service failure that month (as opposed to those 'misses' beyond parity), thus returning the CLEC to the financial position of perfect service." The simple fact that there is some "penalty" for every instance of service failure in a particular month is irrelevant to the issue of whether the CLEC is returned to the financial position of "perfect service." It appears, for example, that the only penalty for failure to meet a due date for installation of an unbundled loop would be a "refund" of the non-recurring charge ("NRC") associated with unbundled loops.[14]

---

[13] As ALTS pointed out in its Comments in CC Dkt 98-56 all competitive companies need effective self-measurements. "Incumbents are not being 'burdened' . . . by being asked to institute timely and accurate measurement of how they treat their retail and wholesale customers."

[14] While BellSouth uses the term "refund" we assume that the way the penalty would work is that no NRC would be charged for the particular service whenever it was finally provided. If the penalty was only a refund of the NRC for service not provided the penalty would be virtually meaningless and there would be no incentive for the ILEC to meet its due

There is no recognition that there are many effects of the poor service that may not be compensated by the NRC.[15] A "refund" of the NRC does not recognize that the CLEC may have lost the customer due to the ILEC's failure and that in any event the reputation of the CLEC and the public's confidence in its ability to provide efficient and reliable service is damaged every time that a CLEC cannot provide service due to an ILEC problem. The ILEC's reputation is unvarnished when this happens.

In addition to not being able to decipher precisely the penalties proposed, ALTS strongly believes that there should be some sort of escalation of penalties when the ILEC failures continue for a period of time or are particularly egregious. The penalties suggested do not seem to vary regardless of the number of problems encountered in a particular month or regardless of the time that it takes BellSouth to correct the problem. Obviously the harm to a CLEC is much greater if BellSouth is unable to make a repair appointment and reschedules for the following month than it is if BellSouth reschedules for the following morning. There should be some graduation of penalties so that when there is a problem, BellSouth has an incentive to fix it promptly.

Representatives from ALTS would be pleased to meet with the Commission to discuss these and other matters. While we have pointed to a number of the problems that we see in the BellSouth ex parte, ALTS' silence on other aspects of the proposal should not be seen as its assent to those parts of the proposal.

Sincerely

John Windhausen, Jr.
EMW

John Windhausen, Jr., President
Emily M. Williams, Attorney
The Association for Local
Telecommunications Services
888 17th Street, N.W.
Washington, D.C. 20006

cc: Larry Strickling
Claudia Pabo

---

dates.

[15] Of course, the BellSouth filing does not specify what the NRC is for most services so ALTS has not been able to determine exactly what the penalty charges would be.